

**IN THE HIGH COURT OF BOMBAY AT GOA**

**PUBLIC INTEREST LITIGATION WRIT PETITION NO. 10 OF 2016**

**AND**

**WRIT PETITION NO. 447 OF 2016**

**PUBLIC INTEREST LITIGATION WRIT PETITION NO. 10 OF 2016**

SHRI SATISH USAPKAR,  
son of Naguesh V. Usapkar,  
aged 48 years, Indian  
National, resident of  
Lalbag Vithalapur,  
Sankhali-Goa.  
Mobile No. 9623686002,  
Annual Income: Rs.75,000/-.

... Petitioner

***V e r s u s***

- 1) DEPUTY TOWN PLANNER,  
Town & Country Planning  
Department, Bicholim-Sattari  
Taluka Office, Bicholim,  
Goa.
- 2) THE CHIEF TOWN PLANNER,  
Town & Country Planning  
Department, Dempo Tower,  
Second Floor, Patto Plaza,  
Panaji-Goa.
- 3) STATE OF GOA, through  
its Chief Secretary,  
having office at  
Secretariat, Porvorim,  
Bardez-Goa.
- 4) VILLAGE PANCHAYAT CARAPUR-SARVAN,  
through its Secretary,  
having office at Carapur,  
Bicholim-Goa.

5) THE COLLECTOR, NORTH GOA,  
Government of Goa,  
having office at  
Collectorate Building,  
Panaji-Goa.

6) SHRI MANDAR DINKAR KHARKANDE,  
son of Shri Dinkar Kharkande,  
aged 36 years, Indian  
National, resident of  
House No. 96, Kodal,  
Carapur, Taluka Bicholim,  
Goa.

... Respondents

Mr. D. Pangam, Advocate for the Petitioner.

Mr. V. Sardessai, Addl. Government Advocate for the Respondent nos. 1, 2,  
3 and 5.

Mr. S. Redkar, Advocate for the Respondent no. 4.

Mr. N. N. Sardessai, Senior Advocate with Mr. D. Gaonkar, Advocate for the  
Respondent no. 6.

**A N D**

**WRIT PETITION NO. 447 OF 2016**

Mr. Anant Bakre,  
63 years of age,  
Son of Ramkrishna Bakre,  
resident of H. No. 51,  
Vithalapur, Sankhalim, Goa.

... Petitioners

***V e r s u s***

1) State of Goa,  
Through Chief Secretary,  
Secretariat, Porvorim Goa.

2) The Chief Town Planner,  
Town & Country Planning Department,  
Dempo Towers, Patto,  
Panaji-Goa.

3) The Deputy Town Planner,  
Office of the Deputy Town Planner,  
Town & Country Planning Department,  
Bicholim/Sattari Taluka Office,  
Bicholim Goa.

4) Additional Collector-I,  
Office of the District Collector North Goa  
Revenue Branch,  
Collectorate Building,  
Panaji-Goa.

5) Village Panchayat of Karapur Sarvan,  
Through its Secretary,  
Karapur, Sarvan,  
Bicholim-Goa.

6) Mr. Mandar D. Kharkhande,  
Major of age,  
Resident of H. No. 96, Kodal,  
Karapur Tisk,  
Karapur, Sanquelim Goa.

... Respondents

Mr. A. D. Bhobe, Advocate for the Petitioner.

Ms. P. Bhandari, Addl. Government Advocate for the Respondent nos. 1 to 4.  
Mr. N. N. Sardessai, Senior Advocate with Mr. D. Gaonkar, Advocate for the  
Respondent no. 6.

Mr. S. Redkar, Advocate for the Respondent no. 5.

**Coram :- F. M. REIS,**  
**NUTAN D. SARDESSAI, JJ.**

**Reserved for Judgment on : 10<sup>th</sup> August, 2016**

**Judgment to be pronounced on : 25<sup>th</sup> November, 2016**

**JUDGMENT (Per F. M. Reis, J.)**

Heard Mr. Pangam, learned Counsel appearing for the Petitioner in PILWP no. 10 of 2016, Mr. N. N. Sardessai, learned Senior Advocate appearing for the Respondent no. 6, Mr. V. Sardessai, learned Addl. Government Advocate appearing for the Respondent nos. 1, 2, 3 and 5 in PILWP no. 10 of 2016, Ms. P. Bhandari, learned Addl. Government Advocate appearing for the Respondent nos. 1 to 4 in Writ Petition no. 447 of 2016 and Mr. S. Redkar, learned Counsel appearing for the Respondent no.4 in PILWP no. 10 of 2016 and Respondent no. 5 in Writ Petition no. 447 of 2016.

2. The above Petition filed in Public Interest, inter alia, seeks direction to quash and set aside the Technical Clearance Order dated 28.01.2016 granted by the Deputy Town Planner and for interim reliefs.

3. It is the contention of the Petitioners that the Respondent no. 6 started illegal construction of compound wall in September, 2015 in the property surveyed under no. 104/2-0 of Carapur Village. It is further pointed out that the said plot of Respondent no. 6 is affected by 30 meters wide road shown in the Regional Plan of 2021. It is further pointed out by the Petitioner that even before granting the Technical Clearance, the Deputy Collector collects infrastructure tax which shows highhandedness and systematic plan to grant construction licence to the Respondent no. 6. Thereafter, on

21.12.2015, the Respondent no. 6 applies for shifting of 30 metres wide road in the Regional Plan 2021 to another place. No decision has been taken on the said request. It is further pointed out that despite of objections by the technical persons, such objections were overruled by the concerned officials and the Technical Approval came to be granted on 29.01.2016. Immediately, thereafter, in April 2016, the construction activity started and in May 2016, the Petitioners filed the above Writ Petition seeking for the aforesaid reliefs.

4. The Respondent no. 1 has filed the reply and stated that another Petition is filed challenging the same Technical Approval being the above Writ Petition no. 447 of 2016. It is further pointed out that on receipt of a complaint, the Respondent no. 1 decided to issue a show cause notice to the Respondent no. 6 dated 25.05.2016 which is still under consideration.

5. The Respondent no. 6 has also filed their reply, inter alia, contending that though the above Petition is claimed to be a Public Interest Litigation, it is in fact a private interest litigation. It is further pointed out that the above Petition has been filed on the premise that the Technical Approval granted to the Respondent no. 6 is a proposed 30 metre wide access shown in the Regional Plan 2021. It is further pointed out that subsequent to the filing of the Petition based on the complaint of Mr. Anant Bakre, the Petitioner in the above Writ Petition, issued a show cause notice thereby directing the Respondent no. 6 to show cause why the Technical Approval should not be

revoked. It is further pointed out that the Petitioner purchased the plot no. 1 admeasuring an area of 512 square metres forming part of the property surveyed under no. 104/2 of Village Carapur pursuant to Sale Deed which is duly registered in the Office of the Sub-Registrar. He has further submitted that the said plot was partitioned from the property surveyed under no. 104/2 pursuant to a partition application before the Revenue Authorities. The Respondent no. 6 has also submitted that he has obtained a Technical Approval on 28.01.2016 from Respondent no. 1 for developing the said plot. It is further pointed out that Respondent no. 6 has obtained all the necessary permission from all the authorities to carry out the development therein. Learned Counsel further pointed out that the proposed Regional Plan of Goa 2021 is on hold and the same is not finalised and the same is de-notified. It is further submitted that for the purpose of development, pending drafting and notification of Regional Plan 2021, is the Zoning Plan of the respective or concerned Villages. It is further pointed out that pending approval of Regional Plan 2021, the Technical Clearance Order is based on the Zoning Plan of the respective Villagers. It is further submitted that the Regional Plan 2021 is kept for objection and the Respondent no. 6 has raised objections to such proposed road. It is further submitted that as the subject plot had the requisite access available after inspection, the Technical Approval came to be granted. It is also pointed out that the Petition is motivated. He has also pointed out that one Mr. Ramapati Keshav Pitre brought JCB machine and illegally excavated the access on 14.05.2016. It

is also submitted that Respondent no. 6 had invested his entire savings to buy the said plot and by availing loans. It is also submitted that the Petition be rejected.

6. The Petitioners have also filed their rejoinder disputing the contention of Respondent no. 6 and reiterated whatever has been stated in the Petition. The Petitioner also files another affidavit. It is stated in the said affidavit dated 02.08.2016 that the Respondent no. 6 intends to develop the said plot by constructing a residential cum commercial building consisting of four shops and one flat. He has also pointed out that after obtaining of the approval, he had started work on 04.04.2016. It is also pointed out he was running short of Rs.15,00,000/- which he has obtained by taking a loan from the Bank of India. He has also pointed out that he had spent around Rs. 35,00,000/- towards the construction. It is also pointed out that super structure of the building is already complete.

7. The Petitioner has filed reply to the said affidavit denying the allegations made therein. He has further pointed out that the Respondent no. 6 is claiming equity which he is not entitled. It is further submitted that the construction is right on the 30 metres State Highway proposed in the Regional Plan. He has also pointed out that when he filed the Petition, he had taken photographs of the subject construction.

8. Mr. Pangam, learned Counsel appearing for the Petitioner in PILWP no. 10 of 2016, has submitted that the proposed construction is on a 30 metres proposed Highway in the Regional Plan and in terms of the Order dated 04.06.2012 pending the finalization of the Regional Plan of 2021, no development can be carried out on such proposed Highway. It is further submitted that immediately after the Respondent no. 6 started construction in April 2016, the present Petition came to be filed in May 2016. Learned Counsel further pointed out that the Technical Approval granted to the Respondent no. 6 is in gross violation of the relevant provisions of law and in fact the concerned Official has overruled the noting of the Technical Officers to the effect that the proposed development was in the proposed Highway. Learned Counsel has also taken us through the relevant provisions of the said Order to point out that the Technical Approval is erroneous and deserves to be quashed and set aside.

9. On the other hand, Shri Nitin Sardessai, learned Senior Advocate appearing for the Respondent no. 6, has pointed out that Respondent no. 6 has invested his personal savings to put up a residential house on the subject plot and, as such, according to him, the question of relying upon the proposed Regional Plan which is admittedly not notified is totally unjustified and erroneous. It is further pointed out that the said Order dated 04.06.2012 relied upon by the Petitioner is not in accordance with law as no such directions can be issued by the Chief Town Planner. Learned

Counsel further pointed out that the Respondent no. 6 has spent more than Rs.35,00,000/- and on account of frivolous contentions raised by the Petitioner, the construction activity is being affected. Learned Senior Advocate has also brought to our notice that in any event the show cause notice is issued by Respondent no. 1 which is under consideration and, as such, the question of granting any further relief in the above Petition is not justified.

10. Learned Addl. Government Advocate appearing for the Respondent nos. 1, 2, 3 and 5 in PILWP no. 10/2016 and Respondent nos. 1 to 4 in Writ Petition no. 447 of 2016 submits that a show cause notice has already been issued and, as such, the authorities will examine the allegations of the Petitioners in accordance with law.

11. We have considered the submissions of the learned Counsel and we have also gone through the records. The main contention of the Petitioners is that the subject construction is being put up in the 30 metres proposed Highway in the Regional Plan 2021. The fact that the Regional Plan has not been notified but kept in abeyance in terms of Order dated 04/06/2012 issued by the Respondent no.2, is not in dispute. The Petitioner is relying upon an Order dated 04.06.2012 which, inter alia, provides that pending drafting and Notification of the fresh Plan, the Regional Plan 2021 shall be used as a revised Plan for the purpose of determining the land use

Corrections  
Carried out  
As per Order  
Dated 26.04.17  
Passed in  
CA(review) no.6/17

the FAR and heights of the building, Regional Plan of Goa 2021. Admittedly, after the Petition was filed, the Respondent no. 1 has issued a show cause notice dated 25.05.2016 to the Respondent no. 6 with regard to the Technical Approval in question. The outcome of the show cause notice has not been brought to our notice and, as such, as the authorities have already taken action to proceed to issue a show cause notice, it would be appropriate to direct the Respondent no. 1 to take a decision on the show cause notice expeditiously within three months.

12.           Though Mr. Nitin Sardessai, learned Senior Advocate, appearing for the Respondent no. 6 has pointed out that the question of relying upon a proposed Regional Plan which is not notified is not at all justifiable, nevertheless, considering that the authorities have already issued such show cause notice, there is no reason to examine such contention of Mr. Sardessai, learned Senior Advocate, at this stage. All contentions with that regard are left open.

13.           So also, the contention of Mr. Sardessai, learned Senior Advocate, that the proposed Highway has no connectivity to the road in the adjoining Village, is a matter which cannot be examined in this Writ Petition as admittedly Respondent no. 6 has already filed his objections to the proposed Regional Plan which are also under consideration before the authorities. All contentions of the Respondent no. 6 are also left open.

14. The only aspect which remains to be considered is whether the Respondent no. 6 can be allowed to proceed with the construction though the show cause notice is under consideration. As rightly pointed out by Mr. Sardesai, learned Senior Advocate appearing for the Respondent no. 6, substantial investment has been incurred by the Respondent no. 6 to the subject plot. But, however, in case the objections of the Petitioners are rejected, the Respondent no. 6 would be entitled to claim damages or any other compensation from the Petitioners in accordance with law. Keeping the contention of Mr. Sardesai, learned Senior Advocate in mind, we find it appropriate to dispose of both the above Writ Petition by issuing directions to the Respondent no. 1 to take a decision on the show cause notice dated 25.05.2016 as expeditiously as possible, in any event, within three months from today.

15. Needless to say, in case the complaints of the Petitioners are not accepted, the Respondent no. 6 shall be entitled to claim damages/compensation from the Petitioners in accordance with law.

16. Subject to the above, we dispose of the above Writ Petition by directing the Respondent no. 1 to dispose of the show cause notice as expeditiously as possible within three months from today in accordance with law.

17. Rule is made absolute in the above terms.

**NUTAN D. SARDESSAI, J.**

**F. M. REIS, J.**

arp/\*